



**Central Administrative Tribunal  
Principal Bench**

OA No.827/2014

Order Reserved on:13.11.2019

Pronounced on:13.12.2019

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)**  
**Hon'ble Mr. Pradeep Kumar, Member (A)**

1. Karan Pal Singh,  
S/o Sh. Jamuna Das,  
R/o Gali No.13,  
Adarsh Colony,  
Palwal, Haryana.
2. Brij Raj Singh,  
S/o Sh. Jaswant Singh,  
R/o H.No.24,  
Brindawan Enclave,  
Near Aradna Cinema,  
Sahibabad, UP.

-Applicants

(By Advocate Shri M.K. Bhardwaj)

**-Versus-**

1. Union of India through  
The General Manager,  
Northern Railway, Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway, Delhi Division, DRM Office,  
Paharganj, New Delhi.
3. The Chief Personnel Officer,  
Northern Railway, Baroda House,  
New Delhi.

-Respondents

(By Advocate Shri Satpal Singh)



## **ORDER**

### **Hon'ble Mr. Pradeep Kumar, Member (A):**

1. There are two applicants in the instant case, namely Shri Karan Pal Singh and Shri Brij Raj Singh.

2. Shri Karan Pal Singh was appointed as a Constable in Railway Protection Force (RPF) on 01.02.1982 in Rs.200-240 grade. This got replaced with Rs.825-1200 w.e.f. 01.01.1986 as per 4<sup>th</sup> Central Pay Commission (CPC). While working in this scale, he was declared as medically unfit for the said post of Constable. He was offered alternate post of Parcel Marker w.e.f. 06.02.1992 which was in the pay scale of Rs.800-1150. This re-deployment after de-categorization in the pay scale of Rs.800-1150 was done after the applicant gave a clear consent on 29.01.1992.

Subsequently, the scale of Rs.800-1150 was replaced with the scale of Rs.2650-4000 w.e.f. 01.01.1996 as per 5<sup>th</sup> CPC. He was granted 1<sup>st</sup> ACP to the next higher scale of Rs.2750-4400 w.e.f. 01.10.1999 when ACP instructions were promulgated as he had already completed 12 years of service on



01.02.1994 and Parcel Marker is an isolated category.

In respect of isolated categories, directions contained in Annexure to ACP policy issued by Railway Board vide RBI-233/99 dated 01.10.1999, specified as under:

“7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given in the immediately next higher (standard/common) pay scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Ministry of Railway’s Notification No.PC-V/97/I/RSRP/1 dated 8-10-97 (RBE NO-133/97, PC-V/1). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6.”

Even though, 6<sup>th</sup> CPC notification was issued on 29.08.2008, the pay scales came into being w.e.f. 01.01.2006. As per 6<sup>th</sup> CPC, the two pay scales of Rs.2650-4000 and Rs.2750-4400 were merged and granted the replacement pay scale of PB-1+Grade Pay Rs.1800 w.e.f. 01.01.2006.

Since the two scales of Rs.2650-4000 and Rs.2750-4400 were both merged and a common replacement scale of PB-1+Grade Pay Rs.1800 was specified, the 1<sup>st</sup> ACP given earlier was discounted as per the clarifications issued by DoP&T vide their OM

dated 10.02.2000. The relevant issue and clarification issued reads as under:



S. No.	Point of doubt	Clarifications
1.	<p>Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay-scale as a result of rationalization of pay-scales. This has resulted into change in the hierarchy in as much as two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration: prior to the implementation of the Fifth Central Pay Commission recommendation, two categories of posts were in the pay-scales of Rs.1200-1800 and Rs.1320-2040 respectively; the latter being promotion post for the former. Both the posts have now been placed in the pay-scale of Rs.4000-6000. How the benefits of the ACP Scheme is to be allowed to such cases?</p>	<p>Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay-scales by ignoring the promotion. An employee who go promoted from lower pay-scale to higher pay-scale as a result of promotion before merger of pay-scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-à-vis the fresh entrant in the merged grade.</p>

Accordingly, he was given 1<sup>st</sup> ACP to the next higher scale of PB-1+Grade Pay Rs.1900 w.e.f.



01.01.2006 and thereafter second MACP was given to the scale of PB-1+GP Rs.2000 w.e.f. 01.09.2008, the date MACP came into force as he had already completed 20 years of service.

Thereafter the 3<sup>rd</sup> MACP, which was otherwise due on 01.02.2012 on completion of 30 years service, was granted to the pay scale PB-1+GP Rs.2400 w.e.f. 01.02.2013, as there was an absentee period for one year which lead to this deferment.

3. Shri Brij Raj Singh, applicant no.2, was initially appointed as a Constable in RPF on 17.02.1990 in the pay scale of Rs.825-1200. He was de-categorized and declared medically unfit for the post of Constable on 04.06.1991 and thereafter he was re-deployed on the alternate post of Parcel Marker in the pay scale of Rs.800-1150 w.e.f. 17.07.1992. For this re-deployment, the applicant gave a clear consent vide his letter dated 08.07.1992. The pay scale of Rs.800-1150 was replaced with Rs.2650-4000 w.e.f. 01.01.1996 when 5<sup>th</sup> CPC was promulgated.

Thereafter, he was given 1<sup>st</sup> ACP to the pay scale of Rs.2750-4400 w.e.f. 17.02.2000 on completion of 12 years of service. The two scales Rs.2650-4000 and



Rs.2750-4400 got merged and replaced with PB-1+GP Rs.1800 w.e.f. 01.01.2006 when 6<sup>th</sup> CPC was promulgated.

2<sup>nd</sup> ACP was due w.e.f. 17.02.2014 on completion of 24 years of service. However, new MACP Scheme came into being w.e.f. 01.09.2008. Since the earlier two scales of Rs.2650-4000 and Rs.2750-4400 were merged into one common scale of PB-1+GP Rs.1800, the 1<sup>st</sup> ACP was discounted and he was given PB-1+GP Rs.1900 w.e.f. 01.09.2008 as part of 1<sup>st</sup> MACP. The 2<sup>nd</sup> MACP was due w.e.f. 17.02.2010 on completion of 20 years of service.

4. Both the applicants plead that before medical de-categorization they were working in the pay scale of Rs.825-1200 whereas after being medically de-categorized they were re-deployed to the pay scale of Rs.800-1150 which is lower and as such this is in violation of Rules 1309, 1301 and 1304 (2) of Indian Railway Establishment Manual (IREM). The applicants plead that they were not granted pay protection also.

5. The applicants further plead that in due course of time when 5<sup>th</sup> CPC recommendations were implemented the basic pay scale of Constable in RPF was actually



upgraded and replaced with the higher pay scale of Rs.3050-4590 vide Railway Board's letter dated 04.12.1997. They plead that their re-deployment and consequential benefits should be with reference to this upgraded scale of Constable in RPF. This was not given to them.

In this connection, it is further pleaded that the Railway Board have issued certain directions on 22.06.2001 which were in turn re-issued by Northern Railway on 12.07.2001 and this indicated that the two financial upgradations which were to be given to Constables in RPF in ACP Scheme, were to the next scale of Rs.4000-6000 and Rs.4500-7000. They plead that this benefit is also due to the applicants as they were originally from RPF. However, this was also not given.

6. The applicants made representations on 01.11.2013. It was brought out that the Constables in RPF who were otherwise their juniors and who were de-categorized subsequent to the applicants but after promulgation of directions dated 22.06.2001, were actually granted the higher pay scales as per para-5 above.



7. Pleading these grievances, the applicants preferred the instant OA and sought relief in the form of a direction to the respondents to protect the pay of the applicants in the pay scale of Rs.3050-4590 with all consequential benefits, including grant of ACP to the next higher grades of Rs.4500-7000 and Rs.9300-34500 with Grade Pay of Rs.4200/-. Certain other reliefs have also been sought.

8. The applicants relied upon a judgment by Hon'ble High Court of Delhi in W.P.(C) No.10729/2009, decided on 08.09.2010 (**Rajinder Singh Rana v. Union of India & Anr.**). It was pleaded that in terms of the ratio of this judgment the applicants are required to be granted the relief sought by them.

9. *Per contra*, the respondents opposed the OA. It was brought out as under:

9.1 The two applicants were medically de-categorized on 17.12.1990 and 04.06.1991 respectively and they were re-deployed to the alternate post of Parcel Marker on 06.02.1992 and 17.07.1992 respectively to the nearest pay scale of Rs.800-1150 as was applicable at that time. In this regard it was brought out that both



had consented for said deployment as brought out in paras 2&3 above.

It is further pleaded that both were granted pay protection also for the basic drawn by them in their earlier pay scale of Rs.825-1200. For Shri Karan Pal Singh, his earlier basic pay of Rs.965/- in the pay scale of Rs.825-1200 was protected while he was fixed in the new pay scale of Rs.800-1150. Similar protection was granted to Shri Brij Pal Singh also.

9.2 The pay sales of Constables in RPF were upgraded w.e.f. 04.12.1997 as per 5<sup>th</sup> CPC. Subsequently, the date of giving effect to these revised pay scales was pre-poned to 10.10.1997 vide policy directives issued on 30.06.2000. Since the applicants were medically de-categorized before the revised pay scales of Constables came into being, the same are not applicable to them and the applicants' request in this regard for grant of the revised upgraded pay scale of Rs.3050-4590 as Constable RPF is not admissible.

9.3 It was pleaded that requisite ACP/MACP benefits have already been given to them and nothing more is due to them and accordingly the OA is required to be dismissed.



10. The matter has been heard at length. Shri M.K. Bhardwaj, learned counsel represented the applicants and Shri Satpal Singh, learned counsel represented the respondents.

11. The salient features in respect of the relied upon judgment of Hon'ble High Court in the case of **Rajinder Singh Rana** (supra) are as under:

The petitioner therein was appointed as Constable in RPF in the year 1974. He was promoted as Naik and thereafter he was medically de-categorized on 26.08.1991. At that time, he was in the pay scale of Rs.950-1400. This scale got replaced with Rs.4000-6000 w.e.f. 01.01.1996. The petitioner therein felt aggrieved due to non-grant of pay protection as well as non-grant of equivalent pay scale and filed OA-857/2009. This was dismissed vide orders issued on 15.04.2009 on the plea of the OA being time barred as cause of action had arisen in the year 1991 whereas he has approached the Tribunal in 2009.

The applicant therein felt aggrieved with this dismissal and filed this Writ before the Hon'ble High Court of Delhi. This Writ was not opposed by the respondents in the Hon'ble High Court. The Hon'ble



High Court relied upon rule 1314 of IREM and noted that pay protection was given in another case which was dealt with in another OA-1355/2005.

11.1 While deciding this Writ, the Hon'ble High Court also relied upon a judgment in the case of **Kunal Singh v. Union of India**, [AIR 2003 SC 1623], and observed as under:

“10. We may also make a reference to the judgment of the Apex Court in Kunal Singh Vs. Union of India, AIR 2003 SC 1623 also relied upon by the co-ordinate bench in the aforesaid case, where also the issue of the benefit accrued to a disabled person has been discussed. In the said case, the Apex Court observed as under:

"9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The section further provides that if an employee after acquiring



disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

Thereafter, Hon'ble High Court passed the following directions vide their judgment dated 08.09.2010:

"13. Taking all the facts into consideration, we cannot uphold the order passed by the Tribunal. Consequently, we allow the writ petition filed by the petitioner and direct the respondent to grant pay scale of Rs.4000-6000 to the petitioner which was the pay scale in which he had been working at the time when he was declared medically unfit i.e. the year 1991. The petitioner would also be entitled to all benefits such as grant of ACP etc. which might have accrued to him in the course of time including higher pay scales as might be recommended by various pay commissions including the subsequent pay commissions. The respondents will fix the pay of the petitioner notionally as on the date when he was called upon to work at a lower post by taking into consideration the pay scale which was admissible to him before he was declared medically unfit. However, keeping in view the delay in having approached the Tribunal, we restrict the payment of



arrears only for a period upto three years prior to the petitioner having filed the Original Application before the Central Administrative Tribunal. The arrears so calculated would be paid by the respondents to the petitioner along with interest @ 9%. Needless to say that till the petitioner is superannuated he would be entitled to similar benefits which would include even the higher pay subject to his availing benefits of upgradation of pay. The needful be done by the respondents within a period of three months.”

12. In this relied upon case, the Tribunal notes that the applicant therein was neither granted the pay scale of Rs.4000-6000 at the time of re-deployment and, nor was granted pay protection to start with. Further, he was re-deployed on a post which was one level below as he was working as a Naik which is higher than the post of Constable whereas he was re-deployed on the post of Parcel Marker which is nearly equivalent to that of Constable.

12.1 As against this, the facts in the instant case are entirely different. The applicants were Constables and the re-deployment was to a nearly equivalent post of Parcel Marker which is in accordance with the rules contained in IREM and even though the pay scale of new post was slightly different but the applicants were granted pay protection. Therefore, even though the pay scale after re-deployment was slightly different, yet their take home basic pay had remained protected.



Moreover, they both had given clear consent for such proposed re-deployment.

12.2 The relevant paras 1309, 1310 and 1313 of IREM read as under:

“1309 Alternative employment to be suitable-

(i) The alternative post to be offered to a railway servant should be the best available for which he is suited, to ensure that the loss in emoluments is minimum. The low level of emoluments should not, however, deter officers concerned from issuing an offer if nothing better is available. The railway servant must be given an opportunity to choose for himself whether he should accept the offer or reject it.

(ii) It would not, however, be appropriate to offer a Group ‘D’ post to a railway servant in the Group ‘C’ service even if the emoluments are almost similar, except in special circumstances. For instance, a cleaner who has risen to be a Shunter could be offered the post of a Cleaning Jamadar if no better post were available.

(iii) For the purposes of this paragraph, an alternative appointment will be considered ‘suitable’ if the emoluments of the same are at level not more than about 25 percent below his previous emoluments in his substantive appointment, or officiating appointment from which he was unlikely to revert. In the case of running staff, the former emoluments for the purpose of comparison will be basic pay plus a percentage of such pay in lieu of running allowance as may be in force. The figure of 25 per cent is in the nature of a guide and not a rigid rule. Each case should be judged on its merits. The underlying object is to ensure that the appointment offered will be considered ‘suitable’ if it will not force the railway servant to adopt a standard of living (as far as the necessities of life are concerned) of a drastically lower standard of comfort. A railway servant with a large family and considerable commitments would merit greater consideration, than one without or with few dependents.

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NOTE:- Care should be taken by Railway Administration to see that the interests of the staff in service are not affected adversely as far as possible and



alternative appointment should be offered only in posts which the staff can adequately fill. Their suitability for the alternative posts be judged by holding suitability test/interview as prescribed under the extent instructions.

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1310. Offer of alternative employment to be in writing. - The alternative employment must be offered in writing, stating the scale of pay and the rate of pay at which it is proposed to reabsorb him in service. On no account should the Railway servant be posted to an alternative appointment until he has accepted the post. A railway servant is at liberty to refuse an offer of alternative appointment and the leave granted to him will not be terminated pre-maturely merely because of his refusal. The Leave must run its course. He will continue to remain eligible for other alternative offers of appointment till his leave expires and efforts to find such appointments should, therefore, continue throughout the currency of his leave.

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1313. Fixation of pay

(a) On absorption in an alternative post, the pay of the railway servant decategorised on account of circumstances which did not arise out of and in the course of his employment will be fixed at a stage corresponding to the pay previously drawn in the post held by him before decategorisation. If there is no such stage in the post in which he is absorbed, he may be given the stage just below the pay previously drawn by him.

(2) In other cases viz. (i) and (ii) of para (1) above, on absorption in an alternative post, the pay of the railway servant will be fixed at a stage corresponding to the pay previously drawn in the post held in a substantive capacity or the officiating pay if he was not likely to revert therefrom whichever is higher. If there is no such stage in the post in which he is absorbed, he may be given the stage just below the pay previously drawn by him. Medically unfitted railway servants absorbed in another category on a lower pay may, on subsequent promotion to higher posts, be allowed, by the grant of advance increments, the same or near about the same pay as may have been drawn by them, before being declared medically unfit, in their original appointment, including officiating appointment, if it is certified that but for being medically incapacitated the railway servants would have continued in the officiating



appointment and would have normally been confirmed against the post, if the post was permanent, or, if the post was a temporary one sanctioned for a period of one year or more, would have held the post for the duration of the currency of the same.

(b) In cases of decategorisation under circumstances arising out of and in the course of employment the pay of a decategorised employee (in the case of running staff, pay plus the percentage of pay treated as emoluments in lieu of running allowance) drawn before decategorisation should be protected in the absorbing grade and if it exceeds the maximum of the absorbing grade the difference may be allowed as personal pay to be absorbed in future increments/increases in pay. Other allowances such as Dearness Allowance, City Compensatory Allowance, House Rent Allowance drawn by a medically decategorised employee should be allowed on pay plus personal pay as admissible in the absorbing grades.

(No. 78/RLT/4 dt. 22-6-79, 18-7-80 and E(NG)I-86-RE3/3 dt. 9-4-86 RBE 76/86).”

12.3 In view of above, the ratio of this judgment of Hon'ble High Court, relied upon by the applicant, is of no help to applicant.

13. The applicants' plea of grant of upgraded pay scales for Constables of RPF, which came into being on 10.10.1997 in respect of 5<sup>th</sup> CPC and w.e.f. 26.02.2001 for upgradation, are not admissible, as medical decategorization and re-deployment took place many years earlier.

14. It is, however, noted that applicant no.1 was granted 1<sup>st</sup> ACP to the pay scale PB-1+GP Rs.1900/- w.e.f. 01.01.2006. Thereafter, 2<sup>nd</sup> MACP to the pay



scale PB-1+GP Rs.2000/- was granted w.e.f. 01.09.2008. This is not correct. This applicant was due 2<sup>nd</sup> ACP on completion of 24 years of service, i.e., w.e.f. 01.02.2006. 2<sup>nd</sup> MACP to this pay scale is, therefore, required to be granted w.e.f. 01.02.2006 and arrears paid.

15. As regards applicant no.2, he was granted 1<sup>st</sup> ACP benefits to the pay scale Rs.2750-4400 w.e.f. 17.02.2000. However, the same got nullified on account of merger of his earlier pay scale of Rs.2650-4000 and scale of ACP Rs.2750-4400 into PB-1+GP Rs.1800/- w.e.f. 01.01.2006. Accordingly he is required to be granted 1<sup>st</sup> ACP benefits to the pay scale of PB-1+GP Rs.1900 w.e.f. 01.01.2006, to nullify the effect of merger. Thereafter, he becomes due for 2<sup>nd</sup> MACP benefits also, to the next higher scale of PB-1+GP of Rs.2000 on completion of 20 years of service. Arrears due on this account also need to be paid.

16. In view of the foregoing, Shri Karan Pal Singh, shall be granted the pay scale PB-1+GP Rs.2000 w.e.f. 01.02.2006 with all consequential benefits, which shall also include payment of arrears along with interest at GPF rate.



Similarly, Shri Brij Pal Singh, shall be granted pay protection for the basic pay he was drawing in pay scale Rs.825-1200, while he was re-deployed in scale Rs.800-1150 on 17.07.1992 with all consequential benefits, if not given so far. Further, he shall be granted the pay scale of PB-1+GP Rs.1900/- w.e.f. 01.01.2006 and PB-1+GP Rs.2000/- on completion of 20 years service, with all consequential benefits, which shall also include payment of arrears along interest at GPF rate.

The above exercise and release of payment be completed within a period of 8 weeks from the date of receipt of a certified copy of this order. A copy of revised pay fixation be also given to applicants.

17. The OA stands disposed of in the above terms. No costs.

**(Pradeep Kumar)**  
**Member (A)**

**(Justice Vijay Lakshmi)**  
**Member (J)**

‘San.’